IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3691 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTIBHAI JAGGANATH VYAS

Versus

VITHALBHAI MULJIBHAI

Appearance:

1. Special Civil Application No. 3691 of 2004

MR PJ VYAS for Petitioner No. 1

MR HARSHIT S TOLIA for Respondent No. 1

..... for Respondent No. 2-22

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 26/07/2004

ORAL JUDGEMENT

What is challenged in the present Special Civil Application under Article 226/227 of the COnstitution of India is the order passed by the Secretary (Appeals), Revenue Department, State of GUjarat, Ahmedabad, dated 18.12.2003 in dismissing the Revision Application No.

30/2003 and confirming the order passed by the Collector, SUrat, dated 3.1.2003 in R.T.S. Appeal No.46/2002 by which the Collector, Surat, modified the order passed by the Deputy Collector, Olpad Pranth, Surat dated 5.7.2002 in confirming the Entry No. 1403 dated 12.5.1990 in favour of the respondents who are the purchasers of the land in question.

2. One Manchhaben Dhaneshwarbhai Vyas was the owner of the land bearing Survey No. 248 Paiki situate at Village Shekhpur, Taluka-Kamrej, District-SUrat. An application was given to the Taluka DEvelopment Officer, Kamrej for granting non-agricultural use permission for the purpose of plotting for residential house and the Taluka DEvelopment Officer, Kamrej by his order dated 23rd August 1982 granted non-agricultural use permission. On the basis of the said permission, different plots were sold by registered sale deeds to the respondents No. 1 to 19 herein. It seems that the names of those persons were not entered into the record of rights and there was no construction put up. The Taluka Development Officer by order dated 14.12.1987 cancelled the non-agricultural use permission order and entry to that effect was mutated vide entry No. 1321 dated 19th January 1988. Though plots were sold to the respondents No. 1 to 19 by the original land owner by registered sale deed, taking benefit of the situation that the name of original land owner continued to be in the record of rights, sold the lands in question to the petitioner herein on 28th April 1990 and entry No. 1403 dated 12th May 1990 was effected and name of the petitioner came to be entered into the record of rights.

3. Being aggrieved and dissatisfied with the entry No. 1403 dated 12th May 1990, the respondents No. 1 to 19 herein preferred an appeal before the Deputy Collector, Olpad being Appeal No. 46/2001 and the Deputy Collector by his judgment and order dated 5.7.2002 directed to mutate the names of respondents No. 1 to 19 in the record of rights on the basis of the registered sale deeds and also the entry No. 1321 dated 19.1.1988 and entry No. 1403 dated 12th May 1990 came to be set aside. Being aggrieved and dissatisfied with the judgment and order passed by the Deputy Collector, Olpad dated 5.7.2002 in RTS Appeal No. 46/2001, the petitioner preferred an appeal before the Collector being Appeal No.46/2002. The Collector vide his judgment and order dated 3.1.2003 ordered to continue the names of respondents No. 1 to 19 on the basis of registered sale deeds and confirmed the order passed by the Deputy Collector, Olpad dated 5.7.2002.

4. Being aggrieved and dissatisfied with the judgment and order passed by the Collector, SUrat dated 3.1.2003 in RTS Appeal No. 46/2002, the petitioner preferred a revision application before the STate Government being REvision Application No. 30/2003 and the Secretary (Appeals), State of Gujarat, AHmedabad, by his judgment and order dated 18.12.2003 dismissed the said revision application and confirming the order passed by the Collector, Surat, dated 3.1.2003 passed in RTS Apepal No. 46/2002. Being aggrieved and dissatisfied with the same, the petitioner preferred the present Special Civil Application under ARticle 226/227 of the Constitution of India.

5. SHri PJ Vyas, learned advocate appearing on behalf of the petitioner has submitted that the entry in favour of the petitioner of 1990 could not have been set aside by the respondent No.2 in 2001. He has further submitted that exercise of powers by the Deputy Collector after a period of 11 years was bad in law as held by catena of judgments of this Court. He has further submitted that the REvenue authority had no jurisdiction to decide the question with regard to title and as the suits are pending between the parties no order could have been passed by the DEputy Collector and/or the Collector more particularly when the petitioner has purchased the land by registered sale deed from the original land owner.

6. On the other hand, Shri Tolia, the learned advocate appearing on behalf of respondents No. 1 to 19 has submitted that in fact the respondents No. 1 to 19 are the purchasers of the land in question prior in time. They have purchased the same in the year 1982-83 on the basis of the order passed by the Taluka Development Officer, Kamrej on 23.8.1982 and as the original land-owner had already sold the plots to the respondents No. 1 to 19 it could not have been sold by the land owner to the petitioner herein in the year 1990. He has submitted that on 20th April 1990 the original land owner had no right, title or interest in the land in question as the plots were already sold to respondents No. 1 to 19 and therefore he has submitted that entry in favour of the petitioner is rightly set aside by the authorities below and the entries in favour of respondents No. 1 to 19 are rightly confirmed and therefore requested to dismiss the present petition.

7. Heard the learned advocates appearing for the parties. The respondents herein are the purchasers of

the land in question on the basis of the Non-Agricultural use permission granted in favour of the original-owner, i.e., deceased Motibhai Mathurbhai Patel. The respondents have purchased various plots by registered sale deeds. Under the provisions of the Bombay Land Revenue Code, more particularly under Section 135 of the Code. The transaction on the basis of the registered sale deed is required to be given effect to. It is also pertinent to note that there is no suit filed by the petitioner for quashing and setting aside the registered sale deeds which are in favour of the respondents. Therefore the transaction in favour of the respondents is still in operation and they have become owners by registered sale deeds. Under the circumstances when on the basis of the registered sale deeds the names of the respondents are directed to be mutated in the record of rights, it cannot be said that there is any illegality committed by any of the authorities below. The petitioner claims to be the owner on the basis of the registered sale deed dated 23rd April 1990. However, in view of the registered sale deeds in favour of the respondents No. 1 to 19 herein which are prior in time the respondent landowner was not having right, title or interest in the land in question as on 23rd April 1990 as the plots in question were already sold to respondents No. 1 to 19, and accordingly it is rightly held by all the authorities below that entry in favour of the petitioner was not proper. All the authorities below, i.e., Deputy Collector, Collector, as well as revisional authority have concurrently found that the entry in favour of the petitioner was not proper and that the entry in favour of the respondents on the basis of the registered sale deed was required to be given effect to. Therefore, no interference is required by this Court exercising power under Article 226/227 of the Constitution of India, more particularly the entry in favour of the respondents is on the basis of the registered sale deed. Merely because there is an entry in the record of rights as such it does not confer any right, title or interest in favour of any other party. The entries are made in the record of rights for fiscal purposes in order to collect revenue. In the present case, as on today, there are registered sale deeds in favour of the respondents which are not set aside and there is no proceeding between the parties with regard to setting aside of the registered sale deeds. In view of the facts and circumstances of the case, there is no substance in the present Special Civil Application. Hence, the same is rejected.

[M.R. Shah, J.]

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